



VERMONT

STATE OF VERMONT PHOTOGRAPHY PRIMER

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Appendix A - Photography License Agreement

The *State of Vermont Photography Primer* is a resource guide focused on the basic elements of photography purchases, selection, and use in marketing materials. The photography you use is an important element in conveying your message. Photography can be used to:

- stop a reader, or viewer, long enough to read, or hear, your message
- reinforce and illustrate your message
- convince a journalist or writer to use your story or press release
- tell a story
- learn about new subjects, places, and things
- provoke emotional reaction or feelings

This primer is intended to provide helpful information for state entities that are responsible for marketing, educational, or general outreach activity. While general guidelines for image uses are presented, the marketing or communication objectives should be the driver in decisions related to the selection and use of photography.

If you have questions on this information or have thoughts on how this document can be improved, please contact the Chief Marketing Officer at marketing@state.vt.us.

Photography can be a primary design element used to deliver a message. As such, there are some considerations that need to be addressed before deciding on the use of a photograph and purchasing an image.

Marketing with Photography, questions to ask before using an image:

Does the state own an image with the correct subject matter in its library?	A large number of photographs licensed to the state are stored in an online, secure repository – called Image Relay. Contact marketing@state.vt.us for Image Relay access and image inquiries.
Will the image be used to capture the audience's attention or as a visual aide/example?	<p>If the purpose is to capture attention, consider an image with strong color or contrast and clean of clutter (e.g. distracting background, mixed activities). Whenever possible, try to include people who represent your target audience.</p> <p>When using an image to show an example, be sure the image is focused and subject matter is easy to see. Black and white print, allowing for print savings, may be an option if the color is not a distinguishing feature.</p>
What is your budget for the total project?	If the project budget is limited, you should consider using low-cost stock photography (assuming an image isn't available through the state library).
How often do you plan to use the image?	Your needs for the image should be considered when determining the type of photography purchase – one-time use vs. licensing. See the chart on page 4 for purchasing options.
Do you need to license images for long-term repeated use?	A license agreement has been crafted and includes a set of recommended, minimally acceptable rights of use. See Appendix A of this document for the agreement.
Did the photographer provide a copy of a signed model release for persons included in the image?	It is the responsibility of the photographer to obtain the model release necessary for using photos with people. It is important to have a copy of this on file. Any purchasing agreement should have this as a condition. (The license agreement in this document includes this requirement.)

Recommendations for using photography:

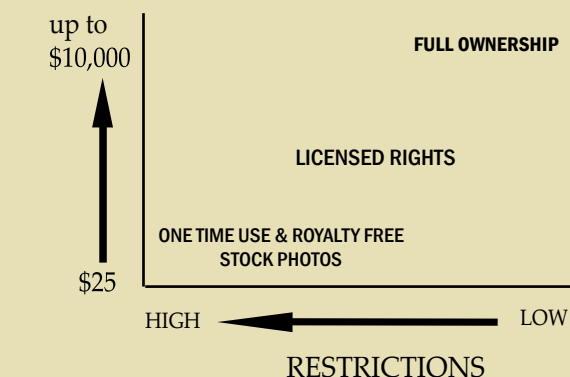
Photographs should portray positive behavior. Show images of persons doing the activity you are encouraging as opposed to the non-compliant or discouraged activity.

Think diversity! Be sure your photographs accurately represent your entire audience. Diversity can be depicted in many ways including race, ethnicity, gender, and occupation (e.g. male nurses, female construction workers).

When preparing information on sensitive topics, consider using stock or one-time use photography to eliminate future awkward or cross-messaging situations.

Be sure images are current. Fashions, hairstyles, or sports equipment should represent current trends and fashions. If the image features a location or business, be sure the location is still accurately represented (e.g. building and/or road improvements haven't changed the scene) and that the business is still there.

COST PER PHOTO



This graph illustrates the relationship between the cost for individual photos and the restrictions associated with the image. In general, as photograph costs increase, image use restrictions decrease. A more detailed explanation for photography options is illustrated in the following table.

	FULL OWNERSHIP	LICENSED RIGHTS (Rights managed)	ROYALTY FREE	ONE-TIME (STOCK)
DESCRIPTION	The cost for full ownership of an image is often the highest, but allows the user un-restricted rights to the image for unlimited use	A rights managed image is typically produced by a professional photographer, and licenses uses based upon the extent of the use, and the scope of benefit by the organization using the image	Royalty free images usually involve a one-time fee or subscription granting the right to use an image in a publication according to the terms agreed upon, with no license fees being paid for further use	One-time use images are charged at a rate determined by a combination of factors: the time for which it is required, the purpose, the print run or circulation of the publication, territory, etc.
AVERAGE COST	\$1,000 - \$10,000	\$200 - \$500 * If images are more than \$500/ea consider full ownership.	\$25 - \$250 * If images are more than \$250/ea consider licencing.	\$25 - \$250 * If images are more than \$250/ea consider licencing.
ADVANTAGES	lifetime ownership - no renewal fees available to all state marketing entities for entire life of image less or no restrictions - can be used in any way for any length of time	more cost efficient than full ownership, can create an exclusive rights-managed license if you want exclusive use of an image - fee is based on such things as exclusivity, distribution, length of time used, geographic location of use. A Rights-managed image usually allows a much larger print run per image than a Royalty-free license.	cost efficient, Pay a one-time fee to use the image multiple times for multiple purposes (with limits). no time limit on when you can use an image. available to all marketing entities usually from an online stock library or CD collection	cost efficient available to all state marketing entities for a one time fee usually from an online stock library or CD collection
DISADVANTAGES	cost is high per image	more restrictive with user rights images may need to be renewed not all licenses are exclusive, that must be stipulated in the agreement, the photographer may sell the image to other parties outside of state government	usually has a limit to how many times you can reproduce it. restrictive with user rights No one can have exclusive rights of a Royalty-free image (the photographer can sell the image as many times as he wants). chance of cross messaging is high	limited to one time use, pay each time you use the image. most restrictive with user rights images are available to anyone with access to the web or image library chance of cross messaging is high

Through the cooperation of various state entities, a photography library is available for state use. The majority of images include scenic and recreational shots of Vermont. Other types of images include:

- Business and industry
- Agricultural and food products
- State parks and historic sites
- Attractions, events, and entertainment

The photographs available have been licensed to the state and carry some restrictions for use. All photographs are available in high resolution to meet a wide range of needs. Use of these photographs is monitored to ensure that specific images are not overused or used by two or more entities for conflicting purposes (e.g. promotion vs. regulation).

Inquiries for specific images can be made to marketing@state.vt.us.

Accessing photography resources

The photographs are organized and stored by Image Relay, a secure online repository. Image Relay is an on-line system that provides the ability to store all types of electronic media files in a secure, password protected location accessible 24 hours per day, 7 days per week. Image Relay does not own or sell the materials on their system, it is rather the mechanism for sharing and storing state purchased and owned materials.

For information about Image Relay, visit www.cmo.vermont.gov or contact Kate Westbrook at marketing@state.vt.us.

Images, clipart and graphics come in a variety of file formats. They have different characteristics and uses. This is a summary of the most common formats with suggestions about their use. (For those of you who are interested, the meaning of the initials is included.)

Resolution refers to the sharpness of an image. A high resolution image has greater clarity but is a larger file. Generally you want high resolution (about 300 ppi–pixels per inch) for printing and low resolution (about 72 ppi) for the Web.

Definitions & Usages

EPS (Encapsulated PostScript)

Most people cannot open an EPS file. You must have the appropriate software to view or edit these files.

- created and edited by programs such as Adobe Illustrator, Macro Media Freehand and Adobe Photoshop
- high quality file that can be resized without distortion
- used by graphic designers and print vendor with programs like Quark XPress and Adobe InDesign
- you may be asked to send an EPS (for example the Moon Over Mountain logo) to a designer or print vendor
- to print these well, the printer must have postscript or postscript emulation built in

GIF (Graphic Interchange Format)

- low resolution (small size) files with very limited color palette for use on screen
- format commonly used for Web graphics
- maintains background transparency, making it a good option for Power Point graphics

JPEG, JPG (Joint Photographic Experts Group)

- most common format for photographs
- you can click on these files and open in any picture editor or web browser
- use for inserting images into programs such as Word, Power Point or Publisher
- use for emailing photographs (compress size to 72 ppi)
- use for images to be posted to the Web (compress size to screen resolution)
- when using a JPG image in print media – be sure the image is at least 300 ppi/dpi
- BEWARE: JPG uses 'lossy' compression: beware, every time you save a jpg the quality is reduced as it 'loses' more picture information in an attempt to make the files smaller during each save

PDF (Portable Document Format)

- created and edited by Adobe Acrobat for exact copies of original documents
- these files are not easily altered and may be password protected for additional security
- used to post documents on the Web
- used to share files when the recipient may not have the software the original was created in
- used to share between PC and MAC

TIFF (Tagged Image File Format)

- high quality image file (large file size), superior to JPEG (also non-lossy)
- use for inserting into Word or Publisher, especially if the item is to be sent to a print vendor

PNG (Portable Network Graphic)

- for placing graphics (i.e. MOM logo) with transparent backgrounds into Word, no hazy white box

PHOTOGRAPHY LICENSE AGREEMENT

This Photography License Agreement (hereinafter "Agreement") confirms that _____ of _____ (hereinafter "Licensor") shall provide the State of Vermont, and its agencies, departments, divisions, affiliates, instrumentalities, and agents, (hereinafter "Licensee") (hereinafter, collectively with Licensor, "Parties") the below described intellectual property (hereinafter "Property"), under the terms and conditions set forth herein.

TERMS AND CONDITIONS

1. **PROPERTY TO BE PROVIDED:** The Property to be provided by Licensor is described at Attachment B, hereto.
2. **PROPERTY DUE.** Upon execution of this Agreement, Licensor shall deliver the Property as specified in Section 1 to _____, on behalf of all entities comprising Licensee.
3. **ASSIGNMENT OF RIGHTS.**
 - a. Licensor irrevocably grants to Licensee, and its successors, officers, employees, and agents on a non-exclusive, non-transferable, non-revocable, royalty-free, and perpetual basis, beginning on the date both the Licensor and Licensee affix their signatures hereto, all rights necessary to use, display, modify, adapt, reproduce, publish and distribute the Property throughout the universe, for all purposes, by any means and methods, and in all known and hereafter existing media and technology. Such grant includes, but is not limited to:
 - i. the right to publish and distribute the Property in and through Licensee's advertisements, Web sites, magazines, flyers, announcements, reports, brochures, greeting cards, postcards, business cards, stationery, calendars, books, multimedia presentations, video productions, packaging, and any other printed or electronic publications or matter of any sort promoting and/or serving the interests of the State of Vermont;
 - ii. the right to sublicense the Property to third parties through any Licensee editorial fulfillment program, by which Licensee distributes photographic images, and/or other intellectual property, to third parties for publication and distribution of such photographic images, and/or other intellectual property, in the third parties' printed or electronic editorial articles promoting and/or serving the interests of the State of Vermont;
 - iii. the right to sublicense the Property to travel agents and tour operators for training, promotional, and marketing activities related to promoting and/or serving the interests of the State of Vermont; and
 - iv. the right to sublicense the Property to chambers of commerce, regional marketing programs, and other private non-profit organizations promoting and/or serving the interests of the State Vermont to include the Property in such third parties' advertisements, Web sites, magazines, flyers, announcements, reports, brochures,

greeting cards, postcards, business cards, stationery, calendars, books, multimedia presentations, video productions, packaging, and any other printed or electronic publications or matter of any sort promoting and/or serving the interests of the State of Vermont.

v. The terms and conditions governing restrictions and limitations on the use of the Property by third parties/sublicensees pursuant to Sections 3.a.ii. - 3.a.iv. above are outlined in Attachment C, hereto.

vi. Notwithstanding the provisions of Sections 3.a.i. – 3.a.iv. above, the right to sell the Property or use the Property to sell another item of any kind is retained by the Licensor and not assigned to Licensee.

b. For the purposes of this Agreement, the term “media” shall mean anything produced in any tangible form, including, but not limited to, printed paper products; other printed materials, including but not limited to, clothing, accessories and novelties; CD-ROM; DVD; digital file; audio or video recording; electronic media, including but not limited to, the Internet; and public performance without limitation.

c. This Agreement shall not preclude Licensor’s own use or dissemination of the Property, provided such use or dissemination is not inconsistent and/or in conflict with this Agreement and such use or dissemination of the Property is not in any way inconsistent and/or in conflict with the promotional and/or service interests of the Licensee. The Licensor shall retain the copyright to the Property. However, if the Licensee desires to purchase the copyright to the Property or any portion thereof, then the Parties shall make a good faith effort to negotiate mutually agreeable terms for such sale of the copyright to the Property or any portion thereof to the Licensee.

d. The Licensor grants the Licensee all rights necessary to crop, make color corrections as necessary, and make reasonable enhancements to the scan of the Property or any portion thereof. Provided Licensee complies with the terms and conditions contained herein, the Licensor hereby waives any and all rights, including moral rights, with respect to the Property and agrees not to institute, support, maintain, or permit any action or lawsuit on the ground that any multimedia product produced hereunder constitutes an infringement of any right, including moral rights, or is in any way a defamation or mutilation of the Property or a part thereof or of the reputation of the Licensor, or contains unauthorized variations, alterations, modifications, changes or translations.

4. REVIEW AND USE. Acceptance of the Property shall be contingent upon such Property meeting the needs and standards of the Licensee and the requirements of this Agreement. If the Property, or any portion thereof, is unsuitable, the Property, or the relevant portion thereof, shall be returned to Licensor within thirty (30) business days of Licensee’s receipt of the Property. Upon such return, Licensor shall retain all rights to the Property. In addition, if the Property, in its entirety, is returned by Licensee, then this Agreement shall terminate upon deposit of the Property in the United States mail or upon institution of another suitable means of return, and no payment shall be made to Licensor. However, if only a portion of the Property is returned by Licensee, then Licensee shall

pay a pro-rata compensation amount reflecting the portion of the Property actually retained by Licensee. In such event, the Parties agree to amend Attachment B to reflect the change in the Property provided.

5. COMPENSATION; RECOGNITION. The Licensee shall, after its receipt and acceptance of the Property, pay Licensor the sum of \$_____ for the rights provided for in this Agreement. In the event of the Licensee's use of the Property, the Licensee will make reasonable efforts to give Licensor name recognition as the creator of such Property. However, the Parties recognize that certain circumstances may arise where such name recognition may not occur, despite Licensee's reasonable efforts.

6. EXPENSES. Licensor shall bear any and all expenses Licensor incurs in connection with this Agreement, except as otherwise specifically provided herein.

7. WARRANTIES. Licensor warrants the following:

- a. Licensor is the sole creator of the Property covered by this Agreement;
- b. Licensor has the right, power, legal capacity, and requisite authority to enter into this Agreement and convey the rights herein granted to the Licensee;
- c. the Property is original, is not used commercially, and is not copyrighted for use by another individual, firm, company, corporation, or other entity; however, in the alternative, if such Property has been used commercially or has been copyrighted for use by another individual, firm, company, corporation, or other entity, then Licensor will have obtained the necessary attached and incorporated release(s) or permission(s) from the holder(s) of such copyright(s) in order to convey the rights herein granted to the Licensee. If in the future such Property is used commercially or is copyrighted for use by another individual, firm, company, corporation, or other entity, then Licensor shall obtain the necessary release(s) or permission(s) from the holder(s) of such copyright(s) in order to preserve the rights herein granted to the Licensee;
- d. the Property does not infringe upon any statutory copyright, common law right, proprietary right or other right whatsoever whether created by operation of law or treaty;
- e. the Property is innocent and contains no matter contrary to law or treaty;
- f. Licensor has obtained, and attached to this Agreement, all necessary release(s), if any, from any individual appearing in the Property and from any individual whose other intellectual property (including, but not limited to, artwork and trademarks) appears or otherwise exists in the Property;
- g. the Property does not contain unlawful material or material that violates any individual's rights, or the rights of any firm, company, corporation, or other entity; and

h. Licensor has not and shall not make any commitment inconsistent with the terms of this Agreement.

8. ATTACHMENTS. Excluding releases as may be attached hereto pursuant to Section 7(c) and (f) above, this Agreement consists of _____ pages including the following attachments, which are incorporated herein:

Attachment A - Customary & Standard Provisions
Attachment B - Description of Property
Attachment C - Terms of Third Party/Sublicensee Use

IN WITNESS WHEREOF the Parties have executed this Agreement on the day on which all Parties' signatures are affixed hereto.

**STATE OF VERMONT,
LICENSEE**

_____,
LICENSOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Date: _____

Date: _____

Soc. Sec./Fed. ID #: _____

Approved as to form:

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT A: Customary & Standard Provisions

1. SET OFF. The Licensee may set off any sums that the Licensor owes the State of Vermont against any sums due the Licensor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereafter.

2. TAXES DUE TO THE STATE.

a. Licensor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Licensor certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Licensor is in good standing with respect to, or in full compliance with, a plan to pay, any and all taxes due the State of Vermont.

c. Licensor understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Licensor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

d. Licensor also understands the State may set off taxes (and related penalties, interest and fees) due the State of Vermont, but only if Licensor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and Licensor has no further legal recourse to contest the amounts due.

3. CHILD SUPPORT. (Applicable if the Licensor is a natural person, not a corporation or partnership). Licensor states that, as of the date this Agreement is executed, the licensor:

a. is not under any obligation to pay support; or

b. is under such an obligation and is in good standing with respect to that obligation; or

c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Licensor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Licensor is a resident of Vermont, Licensor makes this statement with regard to support owed to any and all children residing in any other State or Territory of the United States.

4. NO EMPLOYEE BENEFITS FOR LICENSOR. The Licensor is not an employee of the State of Vermont or of any licensee in this Agreement. Rather, Licensor has undertaken preparation and delivery of this Property on a freelance basis. The Licensor understands that the State of Vermont and any licensee in this Agreement will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation and sick leave, workers compensation or other benefits or services available to state employees, nor will the State or any licensee in this Agreement withhold any state or federal taxes. The Licensor understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including, but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Licensor, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

5. FAIR EMPLOYMENT PRACTICES AND AMERICANS WITH DISABILITIES ACT. The Licensor agrees to comply with the requirements of Title 21, VSA Chapter 5, Subchapter 6, relating to fair employment practices, to the extent applicable. Licensor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Licensor under this Agreement. Licensor further agrees to include this provision in all subcontracts.

6. INDEPENDENCE, LIABILITY. The Licensor will act in an independent capacity and not as an officer or employee of the State or of any licensee to this Agreement. The Licensor shall indemnify, defend and hold harmless the State and its officers, employees, and agents and any licensee to this Agreement, its officers, employees, and agents from liability and any claims, suits, judgments, and damages arising as a result of Licensor's acts and/or omissions in the performance of this Agreement and arising as a result of the acts and/or omissions of Licensee, its officers, employees, and agents in reliance upon this Agreement. In addition, Licensee shall not be responsible for third parties' misappropriation or misuse of the Property in any way.

7. INSURANCE. Before commencing work on this Agreement, the Licensor must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Licensor to maintain current certificates of insurance on file with the State through the term of this Agreement.

WORKERS COMPENSATION: With respect to all operations performed, the Licensor shall carry workers compensation insurance in accordance with the laws of the State of Vermont.

GENERAL LIABILITY AND PROPERTY DAMAGE: With respect to all operations performed under this Agreement, the Licensor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Independent Contractors' Protective
- Products and Completed Operations

Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000	Per Occurrence
\$1,000,000	General Aggregate
\$1,000,000	Products/completed products aggregate
\$ 50,000	Fire Legal Liability

AUTOMOTIVE LIABILITY: The Licensor shall carry automotive liability insurance covering all motor vehicles, including owned, non-owned, and hired, used in connection with this Agreement. Limits of coverage shall not be less than: \$300,000 combined single limit.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums that have been set to protect the interests of the State.

7. AMENDMENT. No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representatives of the Parties.

8. PRIOR APPROVALS. If prior approval by the Vermont Office of the Attorney General or the Vermont Secretary of Administration is required (under current law, bulletins, interpretations), neither this Agreement nor any amendment to it is binding until such required prior approval is obtained.

9. PARAGRAPH TITLES. The titles to the paragraphs of this Agreement are used solely for purposes of identification, and are not to be considered as part of this Agreement or to be construed as affecting the meaning of the language of the paragraphs.

10. ENTIRE AGREEMENT. This Agreement represents the entire agreement between the Parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

11. APPLICABLE LAW. The laws of the State of Vermont will govern this Agreement.

[END OF ATTACHMENT A]

ATTACHMENT B: Description of Property

[Insert detailed description of property]

ATTACHMENT C: Terms & Conditions of Third Party/Sublicensee Use

1. At such time as the State of Vermont ("Licensee"), grants a third party/sublicensee use of the Property pursuant to the Photography License Agreement (of which this Attachment C is a part hereof) for promoting and/or serving the interests of the State of Vermont, said use will be allowed as follows:

a. As a limited, revocable, non-transferable one-time use ("one-time use" shall be limited to mean one instance of publication and distribution of the property through an article in a magazine, newspaper, or other periodical publication, whether in a printed or electronic form, or one instance of distribution through a transmission of television or other broadcast service, presenting the opinion of such magazine, newspaper, or other periodical publication, or of such television or other broadcast service, for the sole use of promoting and/or serving the interests of the State of Vermont), as follows:

i. through any Licensee editorial fulfillment program, by which Licensee distributes photographic images, and/or other intellectual property, to third parties for publication and distribution of such photographic images, and/or other intellectual property, in the third parties' printed or electronic editorial articles;

ii. to travel agents and tour operators for training, promotional, and marketing activities; and,

iii. to chambers of commerce, regional marketing programs, and other private non-profit organizations to include the Property in such third parties' advertisements, Web sites, magazines, flyers, announcements, reports, brochures, greeting cards, postcards, business cards, stationery, calendars, books, multimedia presentations, video productions, packaging, and any other printed or electronic publications or matter of any sort.

b. Under any and all of the above-listed categories:

(i.) the Property will be restricted from use on any item that is intended for sale;

(ii.) the third party/sublicensee will make reasonable efforts to credit the State of Vermont and the photographer indicated.

[END OF ATTACHMENT C]